

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUAN CARLOS CORREA,

Defendant-Appellant.

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UNPUBLISHED  
October 31, 2000

No. 210944  
Oakland Circuit Court  
LC No. 97-153725-FC

Before: Cavanagh, P.J., and Saad and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his convictions by a jury of assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court, applying a second-offense habitual offender enhancement under MCL 769.10; MSA 28.1082, sentenced defendant to 17 to 30 years' imprisonment for the assault conviction and to a consecutive two-year prison term for the felony-firearm conviction.<sup>1</sup> We affirm.

Defendant first argues that the trial court erred by refusing to allow him to impeach a prosecution witness, Luis Santiago, with evidence of a charge pending against the witness. We review a trial court's decision on evidentiary matters for an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

The trial court disallowed the impeachment because (1) a hearing revealed no evidence that Santiago had been given favorable treatment in exchange for testifying against defendant, and the evidence of the pending charge therefore would have been more prejudicial than probative; and (2) the rules of evidence prohibited impeachment based on a mere arrest. Under the current state of our case law, the trial court's ruling was incorrect. Indeed, in *People v Torrez*, 90 Mich App 120, 124-125; 282 NW2d 352 (1979), this Court held that evidence of pending charges is admissible to show

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<sup>1</sup> Defendant also pleaded no contest to a charge of felon in possession of a firearm, MCL 750.227f; MSA 28.421(6), for which the trial court sentenced him to 2 to 7½ years' imprisonment, to be served concurrently with the assault sentence.

possible bias *even if* the record does not reveal any actual promises made in exchange for the witness' testimony. See also *People v Hall*, 174 Mich App 686, 690-691; 436 NW2d 446 (1989), and *People v Whitty*, 96 Mich App 403, 417-418; 292 NW2d 214 (1980) (indicating that a defendant may ask about pending charges on cross-examination – in an attempt to elicit a bias that *may* exist – even without first demonstrating that the witness did in fact receive favorable treatment in exchange for testifying). Accordingly, the trial court abused its discretion by disallowing the impeachment of the witness.

Nevertheless, violations of the right to adequate cross-examination are subject to harmless-error analysis. *People v Kelly*, 231 Mich App 627, 644; 588 NW2d 480 (1998). If we conclude, beyond a reasonable doubt, that there is no reasonable possibility that the error contributed to the verdict, then reversal is inappropriate. *Id.* at 644-645; *People v Whitehead*, 238 Mich App 1, 7-8, 9-10; 604 NW2d 737 (1999); *People v Jones*, 209 Mich App 212, 216; 530 NW2d 128 (1995). As stated in *Kelly*, *supra* at 644-645:

Whether such an error is harmless in a particular case depends on a host of factors, including the importance of the witness' testimony, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness, the extent of cross-examination otherwise permitted, and the overall strength of the prosecution's case.

Our analysis of these factors leads us to conclude that the trial court's error was harmless beyond a reasonable doubt. First, Santiago did not testify that he actually saw defendant shoot the victim, whereas other witnesses did witness the actual shooting and testified about it at trial. Second, although Santiago testified that he saw defendant with a gun on the night in question, this testimony was cumulative to the testimony of several other witnesses. Third, defense counsel rigorously cross-examined Santiago and effectively attacked his testimony through other means. For example, counsel pointed out that Santiago originally told the police that defendant did not shoot anyone and did not have a gun on the night in question, and counsel got Santiago to admit that he lied to the police. Finally, given that the evidentiary hearing conducted by the trial court failed to produce any evidence that the witness received or hoped to receive favorable treatment in exchange for his testimony, a question on cross-examination about the witness' pending charges would not have disclosed any actual basis for bias (i.e., favorable treatment in exchange for testimony) but would merely have permitted a speculative, unverifiable inference of bias. Under the totality of these circumstances, we conclude, beyond a reasonable doubt, that the failure to mention the witness' pending charge did not reasonably contribute to the guilty verdicts. See generally *People v Lester*, 232 Mich App 262, 282-283; 591 NW2d 267 (1998).

Next, defendant argues that the prosecutor committed misconduct requiring reversal during his rebuttal closing argument by improperly suggesting that the jurors had a civic duty to convict defendant. The challenged comment, placed in context, is underlined in the following excerpt:

Our witnesses, a lot of them do not have clean hands. They didn't want to be here. Yes, they did mumble through their testimony. Yeah, it was real obvious they

didn't want to be here, and yes they didn't go to the police in the very beginning. They didn't go to the police at all, the police went to them, that's what happened. The police went to them.

Does that somehow take away from their consistent testimony that's consistent with all the evidence, that the defendant shot somebody on that street? Does that? Because if it does, let's follow that to its natural conclusion, let's go where that takes us.

The next time you have a drive-by shooting or the next time you have a shoot out at a drug house somewhere, you know what? We just won't prosecute because you – [sentence cut off by defense counsel's objection].

We review alleged prosecutorial misconduct to determine whether the defendant was denied a fair trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995). We review each case on its own particular facts and analyze allegedly improper remarks in context. *People v Legrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994). An otherwise improper remark may not rise to an error requiring reversal if the prosecutor was responding to an argument made by defense counsel. *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996).

We conclude that the comment at issue here does not require reversal. First, the comment was made in response to defense counsel's argument that the prosecution witnesses were of questionable integrity and not worthy of belief. See *id.* Second, the comment was cut off in mid-sentence, making its impact minimal. Third, the trial court instructed the jurors that the attorneys' arguments were not evidence and that they must base the verdict on the facts presented. See *People v Curry*, 175 Mich App 33, 45; 437 NW2d 310 (1989). Finally, the evidence of defendant's guilt was sufficiently strong that the brief challenged comment could not reasonably have affected the outcome of the trial; accordingly, the comment did not deprive defendant of a fair trial. See *Paquette, supra* at 342.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Henry William Saad  
/s/ Patrick M. Meter